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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WESTERN WASHINGTON**

MICHAEL SALVO,

Plaintiff,

vs.

Case No. 2:21-cv-00430-DGE

**MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT
FOR EQUITABLE
RELIEF AND DAMAGES**

**HORIZON AIR INDUSTRIES, INC.,
AND ALASKA AIR GROUP, INC.**

(JURY DEMAND)

Defendants.

Plaintiff respectfully submits this Motion for Leave to File his First Amended Complaint pursuant to FRCP 15, LCR 7 and LCR 15. The proposed First Amended Complaint is attached as Exhibit A to this Motion. Plaintiff has

MOTION TO FILE FIRST AMENDED COMPLAINT

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1 stricken through the language to be deleted and highlighted the language to be
2 added in accordance with LCR 15. Plaintiff sent a draft of the Proposed First
3 Amended Complaint earlier today to counsel for Defendants, but counsel for
4 Defendants stated they did not have sufficient time to review the proposal and
5 would let their position be known at a later date. As the [Doc. 10] Minute Entry re:
6 Telephonic Status Conference set the filing date for this Motion as April 1, 2022,
7 Plaintiff files this proposed Amendment today.

8 **I. INTRODUCTION**

9 The Court should grant Plaintiff's Motion for Leave to File his Amended
10 Complaint because Plaintiff meets the requirements under Fed. R. Civ. P. 15(a)(2):
11 "(2) *Other Amendments* a party may amend its pleading only with the opposing
12 party's written consent or the court's leave. The court should freely give leave when
13 justice so requires."

14 **II. PROCEDURAL HISTORY**

15 Plaintiff filed an original complaint against Defendants on March 30, 2021.
16 Defendants filed an Answer to the Complaint on May 21, 2021. The parties have
17 been exchanging paper discovery and recently completed their first round of
18

remote depositions, due to a delay when counsel for Plaintiff contracted COVID in late December 2021 that took a fair amount of time to resolve.

III. ARGUMENT

Federal Rule of Civil Procedure 15(a)(2) provides that “[t]he court should freely give leave [to amend a complaint] when justice so requires”. Fed. R. Civ. P. 15(a)(2). The district court has the discretion to decide whether to grant Plaintiff leave to amend. *See Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996); *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1324 (9th Cir.1982), *vacated on other grounds*, 459 U.S. 810 (1982). In its exercise of this discretion, the court applies Rule 15 to “facilitate [a] decision on the merits, rather than on the pleadings or technicalities.” *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981). Furthermore, the court interprets the language for granting amendments under Rule 15 with “extreme liberality.” *Id.*

A. Under the Ninth Circuit Standard Plaintiff Should Be Granted Leave to Amend.

When deciding whether to grant leave to amend, a court must consider: (1) whether the amendment was filed with undue delay; (2) whether the movant has requested the amendment in bad faith or as a dilatory tactic; (3) whether movant was allowed to make previous amendments which failed to correct deficiencies of

1 the complaint; (4) whether the amendment will unduly prejudice the opposing
2 party and; (5) whether the amendment is futile. *See Eminence Capital, LLC v.*
3 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 371 US
4 178, 182 (1962)).

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7 The five factors are not considered equally. Prejudice is the most important
8 factor and is given the most weight. *Eminence*, 316 F.3d at 1052. Therefore,
9 “[a]bsent prejudice, or a strong showing of any of the remaining *Foman* factors,
10 there exists a *presumption* under Rule 15(a) in favor of granting leave to amend.”
11
12 *Id.* See also *Talwar v. Creative Labs, Inc.*, No. CV 05-3375, 2007 WL 1723609
13 (C.D. Cal. June 14, 2006) (finding the plaintiffs should be granted leave to amend
14 because additional discovery would not unduly prejudice the defendant and the
15 defendant did not make a strong enough showing of bad faith on the part of the
16 plaintiffs or that the plaintiffs requested leave to amend as a dilatory tactic, despite
17 the suspect timing of the filing).

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22 The Ninth Circuit has also held that one of the five *Foman* factors alone is not
23 sufficient to justify the denial of a request for leave to amend. The Ninth Circuit
24 has found that undue delay alone “is insufficient to justify denying a motion to
25 amend” and has “reversed the denial of a motion for leave to amend where the
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1 district court did not provide a contemporaneous specific finding of prejudice to
2 the opposing party, bad faith by the moving party, or futility of the amendment.”
3
4 *Bowles v. Reade*, 198 F.3d 752, 758 (9th Cir. 1999).

5
6 In this case, Plaintiff’s amendment will not unduly prejudice Defendants. First,
7 the amendment largely explains or expounds upon facts that were previously raised
8 in the original complaint. Plaintiff has added a protected activity discussed during
9 Defendants’ March 22, 2022 deposition of him. Second, discovery is ongoing.
10 Both sides have time to further interrogate about the allegations of the Proposed
11 First Amended Complaint further.
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15 Plaintiff did not file the amendment with undue delay. Rather, Plaintiff filed the
16 amendment by the deadline set forth in [Doc. 10] Minute Entry re: Telephonic
17 Status Conference, including based on the enhanced information discovery
18 provided. Plaintiff does not request leave to amend in bad faith or for dilatory
19 reasons. Instead, Plaintiff requests leave to amend because he understood he had
20 until April 1, 2022 to clarify further his allegations and add to or explain his
21 protected disclosures if he deemed it necessary. Plaintiff’s amendment is not futile
22 because he articulated and further explains legally cognizable claims for damages
23 and equitable relief.
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4 **IV. CONCLUSION**

5 Based on the above reasons, this Court should grant Plaintiff's Motion.
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8 DATED: April 1, 2022

9 Respectfully submitted,

10 Law Office of S.L. Ayers

11
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